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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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FILE:



Office: LOS ANGELES

Date:

**SEP 30 2009**

MSC-05-350-12081

IN RE:

Applicant:



APPLICATION:

Application for Status as a Temporary Resident pursuant to Section 245A of the  
Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

SELF-REPRESENTATION

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. If your appeal was sustained, or if your case was remanded for further action, you will be contacted. If your appeal was dismissed or rejected, you no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case.

John F. Grissom

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the Director, Los Angeles, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet (together comprising the I-687 Application). The director denied the application because the applicant failed to establish his continuous residence in the United States throughout the requisite period.

On appeal, the applicant contends that he has submitted sufficient credible documents to prove that he entered the United States before January 1, 1982 and that he has resided continuously in the United States throughout the requisite period. The applicant additionally submits a death certificate of [REDACTED] who died on March 5, 1982 in Laguna, the Philippines.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term "until the date of filing" in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant shall be regarded as having resided continuously in the United States if at the time the application for temporary resident status is considered filed, as described above pursuant to the CSS/Newman Settlement Agreements, no single absence from the United States has exceeded 45 days, and the aggregate of all absences has not exceeded 180 days during the requisite period unless the applicant can establish that due to emergent reasons the return to the United States could not be accomplished within the time period allowed, the applicant was maintaining a residence in the United States, and the departure was not based on an order of deportation. 8 C.F.R. § 245a.2(h).

If the applicant's absence exceeded the 45-day period allowed for a single absence, it must be determined if the untimely return of the applicant to the United States was due to an "emergent

reason." Although this term is not defined in the regulations, *Matter of C-*, 19 I&N Dec. 808 (Comm. 1988), holds that "emergent" means "coming unexpectedly into being."

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. *See U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

At issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of proving by a preponderance of the evidence that he entered the United States before January 1, 1982 and has thereafter resided continuously in the United States until he filed or attempted to file the application for temporary resident status.

The applicant asserted during the interview that he first entered the United States in 1980 and that he had resided continuously in the United States throughout the requisite period. He further claimed that the only time he left the United States during the requisite period was for seven months between March 1982 and October 1982 due to the death of his father in the Philippines and to get married.

As evidence of his assertions, the applicant submitted five affidavits, a witness statement, and a letter from Saint Mary Magdalena Catholic Church.

The letter from Saint Mary Magdalena Catholic Church states that the applicant has been an active member for the past five years or since 2000. Since this evidence does not relate to the **requisite period**, it will not be considered. Similarly, the affidavits from [REDACTED] and [REDACTED] will not be considered since none of them relates to the requisite period.

[REDACTED], and [REDACTED] generally declare that they have personally known the applicant since 1980, 1983, and 1986, respectively. Some listed the addresses where the applicant resided during the requisite period. However, none describes with sufficient detail what the applicant did with his time, his activities, friendships, interaction with the community or other particulars of his residence in the United States during the requisite period. None provides a detailed account of how he or she dates the beginning of his or her friendship with the applicant in 1980, 1983, or 1986. To be considered probative and credible, witness affidavits must do more than simply state that an affiant knows an applicant and that the applicant has lived in the United States for a specific time period. Their content must include sufficient detail from a claimed relationship to indicate that the relationship probably did exist and that the witness does, by virtue of that relationship, have knowledge of the facts alleged. Simply listing the addresses at which the applicant resided in the United States during the requisite period does not establish the reliability of the assertion and is not sufficient to establish his eligibility for the benefit sought. The affidavits and witness statement mentioned above lack probative value as evidence of the applicant's continuous residence in the United States since 1980.

On appeal, the applicant submits a death certificate of his father and asserts that the reason he left the United States in 1982 for seven months was his father's death.

Individually and together, the evidence submitted does not establish by a preponderance of the evidence that the applicant resided continuously and was physically present in the United States from 1980 through the date he filed or attempted to file the application for temporary resident.

The lack of detail in the record coupled with the absence of credible and probative documentation to corroborate the applicant's claim of continuous residence for the entire requisite period seriously detract from the credibility of his claim. Pursuant to 8 C.F.R. § 245a.2(d)(5), the inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. Given the inconsistencies in the record and the lack of credible supporting documentation, it is concluded that the applicant has failed to establish by a preponderance of the evidence that he has continuously resided in an unlawful status in the United States for the requisite period as required under both 8 C.F.R. § 245a.2(d)(5) and *Matter of E- M--*, *supra*. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis.

Beyond the decision of the director, the AAO finds that the applicant is ineligible for the benefit sought because he was outside the United States for more than 45 consecutive days during the requisite period. Under the regulations, if an applicant for temporary resident status left the United States for more than 45 days during the requisite period, his or her residence would not be deemed continuous unless his or her inability to return was due to emergent reasons. 8 C.F.R. § 245a.2(h), I.N.A. § 245A(a)(2), 8 U.S.C. § 1255a(a)(2). Here the applicant has not provided any evidence or explanation to show why he could not return to the United States within the 45-day allowable time period in 1982. The application may not be approved for this additional reason.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.